



STATE OF INDIANA

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June 22, 2009

Kevin Patmore
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Re: Informal inquiry 09-INF-20 regarding GPS logs

Dear Mr. Patmore:

This advisory opinion is in response to your informal inquiry dated June 18, 2009. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

You write on behalf of the Town of Santa Claus. You serve as the attorney for the Town. You indicate that the Town Council is considering installing global position system ("GPS") monitors in the police cars owned by the Town. The system would provide access to the location of each of the police cars. You indicate that Town Council members will have access to a website showing the location of the cars. You also assume the Town Marshal will have access to the website.

Your questions are as follows:

1. Are logs of the activity created and stored either in paper format or electronic format subject to disclosure?
2. Would the Town be required to provide public access to the actual real-time monitoring?

ANALYSIS

The public policy of the APRA states, "[p]roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The Town is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Town during regular business hours unless the public records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The APRA provides that at the discretion of the agency, the following (among others) may be withheld from disclosure:

Investigatory records of law enforcement agencies.
I.C. § 5-14-3-4(b)(1).

Investigatory records are defined as “information compiled in the course of the investigation of a crime.” I.C. § 5-14-3-2(h). A law enforcement agency is an agency or department of any level of government “that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders. . .” I.C. § 5-14-3-2(l)(6).

I agree with you that the investigatory records exception would not be applicable to all of the GPS logs. The Town is not a law enforcement agency, so by definition the records would not be investigatory records of a law enforcement agency. If the records are created and maintained by the Town, the records could not be withheld from disclosure on the basis of I.C. § 5-14-3-4(b)(1).

If the logs were created and maintained by a law enforcement agency and were compiled during the course of the investigation of a crime, that law enforcement agency could exercise its discretion to allow Council members to have access to the records but to restrict access to the records to only the Council members. The investigatory records exception is discretionary. I.C. § 5-14-3-4(b)(1). The law enforcement agency’s denial of access cannot be arbitrary or capricious. I.C. § 5-14-3-9(g)(1)(B). In this scenario, though, it would be my opinion a policy granting access to only Council members because they need access in order to carry out public business would not be arbitrary or capricious. This scenario would only apply, though, for those records which are investigatory.

If the logs were created and maintained by a law enforcement agency, only those records compiled during the course of the investigation of a crime could be withheld from disclosure. I.C. § 5-14-3-4(b)(1). The logs which are created and stored in paper, electronic or other format and which are not compiled during the course of the investigation of crime would not be investigatory records. I have issued opinions about similar records maintained by law enforcement agencies; in opinions related to 911 call tapes and in-car video recordings, I have opined that neither type of record would fall under the investigatory records exception unless the record was compiled during the course of the investigation of a crime. *See Opinion of the Public Access Counselor 07-FC-274* (regarding 911 tapes) and *Opinion of the Public Access Counselor 09-FC-71* (regarding in-car video), both available at www.in.gov/pac.

An exception to disclosure that may apply to the records can be found at I.C. § 5-14-3-4(b)(10), “[a]dministrative or technical information that would jeopardize a record keeping or security system.” Former public access counselors and I have addressed this

exception in previous opinions. Counselor Hurst addressed the issue in *Opinion of the Public Access Counselor 03-FC-126*, and I addressed a similar issue in *Opinion of the Public Access Counselor 08-FC-44*. Following the analysis provided in both opinions, it is my opinion the Town may well be able to bear the burden of proof to sustain a denial of access to the logs on the basis of the I.C. § 5-14-3-4(b)(10) exception.

Finally, you inquire whether the Town must provide public access to the real-time monitoring. In my opinion, the Town is not required to do so. The APRA requires that a public agency must provide access to inspect and copy its public records, unless an exception to disclosure applies. I.C. § 5-14-3-3. Nothing in the APRA requires an agency to provide access to this type of real-time monitoring system. As you suggest, this would be akin to granting access to a record as it is being created. While the APRA provides specific timeframes for an agency to respond to a request for access to records, the APRA does not provide specific timeframes for when records must be produced. And nothing in the APRA provides access to records as they are being created.

Please do not hesitate to contact my office if we can be of further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor